

13 January 1956

25X1A9A

MEMORANDUM FOR:

THROUGH: Assistant Director for Scientific Intelligence

SUBJECT: Copyright

REFERENCE: Memorandum for General Counsel, CIA, from
25X1A9A , dated 28 December 1955

1. The laws of the United States pertaining to copyrights are embodied in Title 17 of the U. S. Code. Section 8 of that Title provides, inter alia, "No copyright shall subsist in the original text of . . . any publication of the United States Government." The case law is fairly clear that a book written entirely on Government time by a Government employee in the course of his duties is Government property and its publication, whether undertaken directly by the Government or through a private publisher, would be a Government publication. The cases also indicate (viz., *Sawyer vs. Crowell Pub. Co.*, 49 F. Supp. 471) that if the author should secure a copyright, he would hold this copyright in trust for the Government. Consequently, since the Government would be the true legal owner, the copyright would be invalid.

2. Conversation with the Register of Copyrights does, however, reveal that there has been no clear judicial interpretation of whether a book written partly on Government time and partly on the author's own time is necessarily a Government publication if the department of Government concerned chooses not to exercise any rights it may possess. The question of what percentage of time spent on the book was Government and what percentage was personal is germane but not necessarily conclusive. It was suggested that the application for copyright filed by the author does not require any indication that the author is a Government employee or that part of the time he put on the book was Government time. Consequently, if the concerned department interposes no objection to the granting of copyright, the issue could be raised only in subsequent litigation where someone charged with infringement of the copyright might interpose as a defense that the book was actually a Government publication.

3. Since the respective legal and equitable rights of the author and of the Agency are undetermined and might be considered controversial, the completion of the attached agreements in order to settle the rights of the parties seems to provide sufficient consideration for the promises of each.

4. The suggestion that an arrangement be made between the author and the Agency, whereby the author would return any net profits to the Agency, seems objectionable legally for the reason that it indicates an assertion by the Agency of an interest in title and would be contrary to a position that the title lies in the author and that the Agency is relinquishing whatever equitable rights it might have as a result of the contribution of some Government time to the writing of the book. Since it is highly unlikely that any net profits will result from the publication of this book, there seems to be no purpose served in obscuring the legal situation by completing documents intended to cover a most remote contingency. Should the administrative determination be otherwise, however, this Office would be happy to draft a suitable document. Such document, if executed, should be separate from the two documents attached to this memorandum, since it will probably be necessary to indicate the existence of an agreement to license to any prospective publisher, while there is no reason why the publisher would have to be aware of an agreement between the author and the Agency respecting the disposition of profits.

5. The attached Agreement to License should be executed prior to the author's making any attempt to secure a copyright of publication. The license itself should be executed as soon as practicable after copyright is obtained.

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Assistant General Counsel

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